

SANTA MONICA MOUNTAINS CONSERVANCY

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Honorable City Council Members
City of Malibu
23815 Stuart Ranch Road
Malibu, California 90265

City of Malibu Draft Local Coastal Program

Honorable City Council Members:

The Santa Monica Mountains Conservancy (Conservancy) is the principal state agency charged with planning and conservation for the Santa Monica Mountains Zone and Rim of the Valley Corridor pursuant to Division 23 of the Public Resources Code. The current Local Coastal Program, or LCP, (adopted September 2002 by the California Coastal Commission) provides extensive protection for the natural resources and public access opportunities in the City of Malibu's jurisdiction in the Santa Monica Mountains, consistent with the intent of the Coastal Act. If the revised LCP proposed by the City of Malibu (March 2004) is adopted and implemented, it will result in irreparable harm to the natural resources and public access opportunities within the coastal zone of the Santa Monica Mountains.

The Local Coastal Program (LCP) includes two documents, the Land Use Plan (LUP) and the Local Implementation Plan (LIP). In this letter, we refer to "existing" as the text in the September 2002 LIP and LUP, adopted by the California Coastal Commission, while "proposed" refers to text proposed by the City of Malibu in the March 2004 revised LIP and LUP. The Conservancy's comments in this letter focus on impacts to biological resources, public access, scenic/visual resources. The Conservancy is primarily concerned with the ESHA designation and protections, assuring permanent protection for mitigation areas, and assuring adequate public access and recreation. The Conservancy may submit additional comments at a later date.

ESHA designation, ESHA protection, and Environmental Review Board

Our analysis shows that the majority of the ESHAs that are designated in the existing LCP (September 2002), are proposed as “Resource Protection Areas” (RPAS) in the City’s document. It appears that the ESHAs in the City’s proposed LCP reflect primarily many of the ESHAs from the County’s LCP from 1986. The text in the LIP to protect RPAS is quite limited (Chapter 17.30.80 Development Standards for Resource Protection Areas). The re-designation of the Coastal Commission’s ESHAs to RPAS would undoubtedly result in a significant loss of resource protection throughout much of the City.

Consistent with the Conservancy’s comments in a May 20, 2002 letter to the California Coastal Commission, the ESHAs from the 1986 County designations must be expanded so that they are large enough to maintain connectivity and key indicator wildlife species. Such connectivity requires the inclusion of coastal sage scrub and chaparral which are functionally integral to these original 1986 ESHA riparian areas.

Notwithstanding the diminished area with the proposed RPAS should the City’s plan be adopted, it is critical that more protective measures be included for RPAS otherwise they will contain insufficient mechanism to minimize numerous significant adverse ecological impacts. At the very least, with respect to RPAS, the LCP should include mitigation requirements for mitigation for impacts to native habitats, restrictions on lighting, restrictions on planting of non-native (invasive) vegetation, and restrictions on fencing. In addition it is imperative that a biological study be required prior to impacts to RPAS (proposed LIP, Chapter 17.30.040 Supplemental Application Requirements).

The proposed City LUP states that recommendations for deletions to ESHAs would be made by the City Biologist, ERB, or other City appointed group of qualified resource management professional (proposed Policy 3.4a in proposed LUP). The language in existing Policy 3.7 states that the City biologist and ERB shall review the information and the ERB would make a recommendation to the decision-making body. This language in the existing policy should be retained. Deletions from ESHAs should not be left to the technical recommendation of one person (i.e., the City biologist). These cases warrant additional independent technical review by more than one individual (i.e., by the ERB).

In addition, proposed Policy 3.39 (in the LUP) should retain the existing language such that the City Biologist and ERB review new development within or adjacent to ESHAs, or within RPAS. The proposed language states that the City biologist, ERB, or other City-appointed group shall review these developments.

The proposed LUP defines the ERB as the Malibu Environmental Review Board or any body designated by the City Council to perform its functions (see Chapter 17.04 Definitions). This definition is inadequate to ensure that necessary independent technical review is undertaken for these projects. The ERB should be defined such that a minimum of half of the members are professional ecologists from government agencies or universities. At the very least, the language regarding the composition of the ERB in existing Policy 3.38 (September 2002 LUP) should be retained.

The meaning of “core habitat” in the definition of ESHAs in Policy 3.1 of the proposed LUP needs to be expanded. Proposed Policy 3.1 states native woodlands, coastal sage scrub, or chaparral may meet this definition (of ESHA) where they are (1) part of the core habitat areas of the Santa Monica Mountains, and thus are contiguous with and part of the regionally significant block of unfragmented habitat along the main spine of the mountains, or (2) located outside the core habitat areas of the Santa Monica Mountains, but have sufficient functional connectivity with core habitat areas... In fact, core habitat is not limited to the *main spine* of the Santa Monica Mountains. For example, core habitat stretches to the Pacific Coast Highway at Corral and Puerco Canyons.

Proposed changes to Policy 3.23 of the proposed LUP are not warranted. The proposed changes provide the ability to reduce an ESHA buffer below 100 feet given the review and approval of the City Biologist. This change provides for inappropriate subjective decisions by one person and are not justified. The existing language in Policy 3.23 should be retained.

Mitigation fund for native tree and habitat impacts

The policies in the existing LUP regarding establishing a mitigation fund administered by the Santa Monica Mountains Conservancy for impacts to native trees have been modified in the March 2004 version proposed by the City. Revised Policies 3.65 and 3.66 indicate that once appropriate studies have been completed to support such a fee, the City shall implement a program to collect in-lieu fees. Under this proposed language, there is no timeline for completing such a study or implementing this program. Several jurisdictions already implement such types of programs, so this is not a novel idea, and there are existing examples from which a program could be modeled. The existing language in the LUP (Sept. 2002 version) is more appropriate and should be retained, with the modification that the Mountains Recreation and Conservation Authority administer the fund rather than the Conservancy. Administering such a fund is consistent with the mission

of the Conservancy and the MRCA. The existing language should also be retained in the LIP (proposed LIP, Chapter 17.32. 050 Mitigation, B. Alternative Mitigation,1.).

Similarly, the language specifying that the in lieu fee mitigation funds would be administered by the Conservancy for impacts to ESHAs should also be retained in the LIP (Chapter 17.30.070 Economically Viable Use E. Mitigation 3.c.[2]). However, MRCA is a more appropriate agency to administer this fund.

Protection of mitigation areas

The LCP should require that habitat protected as mitigation be dedicated in fee simple to a public park or conservation agency. Alternately overlapping conservation easements should be required in favor of the City of Malibu and a public park or conservation agency. The MRCA, among other agencies, is an appropriate agency to accept these dedications. Open space deed restrictions on restored and conserved areas (as specified in the proposed and existing LIPs, Chapter 17.30.070 and Chapter 4, p. 134 respectively) do not assure protection. In addition, evidence of purchase of development rights on a donor site and recordation of an easement to the City of Malibu on the retired lot(s) do not assure protection.

This language should also be incorporated into Chapter 17.36–Cumulative Impact Mitigation of the LIP. This chapter appears to replace Chapter 7, entitled Transfer of Development Credits in the September 2002 LIP. (See Chapter 17.36.100 Required Findings and Chapter 17.36.090 Procedures C. 2.).

Protection of Malibu Creek and Civic Center

The ESHA along Malibu Creek should be expanded on Proposed ESHA Map 3. Also, the zoning designations along Malibu Creek and in the Civic Center should be more protective. The proposed LIP (Chapter 17.08 Zoning Designations and Permitted Uses) states that the LIP Zoning Map (*Zoning Map*) of the City of Malibu shall be the map dated _____, as may be amended by the ordinance of the City Council and certified by the California Coastal Commission. City of Malibu Zoning Map 3 shows that Malibu Creek and the immediately adjacent areas (north of PCH) are designated as RR1 (Rural Residential 1 Acres) or SFL (Single Family Residential Low Density).¹ Also the area to the immediate west of lower Malibu Creek is designated as CG (Commercial General) or MRBF (One Unit

¹Conservancy was unable to determine the exact designations based on the colors of the zoning map.

per Per 1885 Sq. Ft.).² Given the statewide biological significance of Malibu Creek and watershed, the public ownership (by State Parks) in this area, and the fact that wetlands were historically present in this area, “upzoning” from the 1986 LCP is not justified. Much of this area was designated as M2 (Mountain Land, 1 DU/20 acres) in the 1986 LUP. The Civic Center should be down zoned from the proposed LCP, in recognition of the historic wetlands onsite. Also, the boundaries of Malibu Creek State Park (north of PCH) should be designated as Public Open Space on the zoning map.

Other impacts to biological resources

The proposed definition of streams in the LIP is too narrow and glaringly insufficient, and would result in substantial limitations to the protection of streams. In the proposed LIP, the definition (Chapter 17.04 Definitions) is limited to “a body of water identified by a blue line on a 14-minute USGS quad sheet...” This encompasses only a subset of streams and omits numerous streams that exist on the ground in the City of Malibu. The existing definition in the existing LIP (September 2002) should be retained.

A map is provided entitled GPA-02-002/ZMA-02-002 Proposed Zoning/General Plan Map to zone part of the “Rubens” property adjacent to Latigo Canyon Road as RR-5, while the remaining part of the property is “Proposed Deed Restriction/Dedication (to remain RR-20). The property should not be “upzoned” from RR-20 to RR-5. This project supports high quality coastal sage scrub and native grasses, it supports a scenic ridgeline, and it is adjacent to National Park Service parkland. The Conservancy has provided several comment letters regarding this project.

Also, the Conservancy concurs with comments submitted by Heal the Bay (see November 21, 2003 letter), recommending buffers of a minimum of 100 feet from the outer canopy of riparian vegetation. That letter explains the need and justification for buffers for streams.

The language regarding fuel modification has been proposed to be changed to propose that minimization of fuel modification and brushing should only be minimized in ESHA, ESHA buffer, and/or public parklands (proposed LUP, proposed Policy 3.59; underlining added for emphasis). Clearly, fuel modification and brushing should be avoided and minimized in these areas. However, they should be minimized in all development areas throughout Malibu.

²Conservancy was unable to determine the exact designations based on the colors of the zoning map.

The existing Policy 3.59 should be retained. Minimization of brush clearance protects habitat and reduces erosion.

Public access and recreation

Many changes proposed by the City of Malibu to the LIP and LUP appear to provide fewer assurances that the provision of coastal access and recreation is maximized consistent with the protection of public rights, private property rights, and coastal resources, as required by the California Constitution and provided in Section 30210 of the Coastal Act (underlining added for emphasis).

Regarding protection of historic public use, the LIP is proposed to be revised such that an equivalent area of public access or recreation shall be provided *only if* [a]dequate and equivalent public access is unavailable within 1320 feet (see Chapter 17.46.070 Standards for Application of Access Conditions, F. Protection of Historic Public Use). (Underlining was added for emphasis.) There is no justification for this additional text (shown above underlined). Section 30211 of Coastal Act Policy states that development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization.... A reduction in the number of access points is clearly interfering with the public's right of access, and should be mitigated.

In the LIP a proposed change would result in the City requesting that the CCC delegate authority to process legal documents, in which case the CCC shall (underlining added) delegate its authority to the City to approve a government agency or private association that seeks to accept the offer or grant of easement (see Chapter 17.46.070 Standards for Application of Access Conditions, H. Implementation, 5.). The CCC should retain the authority to approve the accepting agency or entity; the existing text language should be retained (see Chapter 12.7.8 Implementation, D. of existing LIP).

Proposed Policy 2.49 states that a trail offer of dedication shall be required in new development where the development causes or contributes to adverse public access impacts, and the property contains a LCP mapped trail alignment or where there is substantial evidence that prescriptive rights exist. The language in this policy is too restrictive regarding when to require trail dedication associated with new developments. Furthermore, the National Park Service is leading an interagency effort, with public input, to develop a Trails Management Plan for the Santa Monica Mountains Recreation Area. Trails identified in this plan, when it is finalized, should be implemented. This policy should be modified as follows (strike-out means to delete, underline means to add):

A trail offer of dedication shall be required in new development where the development causes or contributes to adverse public access impacts, ~~and or~~ the property contains a LCP mapped trail alignment, or where the property contains a trail mapped on another trail plan adopted by a public agency, or where there is substantial evidence that prescriptive rights exist, or in locations where it has been determined that a trail access is required to link recreational areas to the shoreline or provide alternative recreation and access opportunities pursuant to the access and recreation policies of the LCP and Coastal Act.

These changes should be reflected in the proposed LIP, Chapter 17.46.070 Standards for Application of Access Conditions, Section D. Trail Access.

Proposed Policy 2.66 (in the proposed LUP) states that an offer to dedicate (OTD) an easement for vertical access shall be required in all new developments causing or contributing to adverse public access impacts, consistent with the guidelines contained in Policy 2.86. This policy also provides for provisions avoiding interference with prescriptive rights when there is substantial evidence that prescriptive rights exist. In order to clarify when OTDs are to be required, the following language in Coastal Act Policy Section 30212(a) should be added to this policy:

- (a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where:
 - (1) it is inconsistent with public safety, military needs, or the protection of fragile coastal resources,
 - (2) adequate access exists nearby, or
 - (3) agriculture would be adversely affected. Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.

Also, the LCP should be modified to emphasize that public agencies should be preferred entities to accept access easements. (The text should be modified in the proposed LIP, Chapter 17.46.070 Standards for Application of Access Conditions, H. Implementation, 4.). Public agencies do not answer to the desires of a private Board of Directors, have a

responsibility to serve the public, and may be in existence further in the future than private associations.

Scenic and visual resources

The proposed LIP states that, "If the building site location is within one mile of a scenic road or public viewing area, and will be visible when viewed from scenic roads of public viewing areas toward scenic areas, then the developed shall be sited to avoid significant, to the extent feasible, impacts on "scenic areas," as defined in the Land Use Plan (17.34.060 Scenic and Visual Resource Standards, A. Development Siting, 1.). The underlined text above has been added in the March 2002 proposed version compared to the existing LIP (Section 6.5 Development Standards, A. Development Siting, 1. p. 145). This additional text has no basis and the current text should be retained.

What is the justification for not including Corral Canyon Road as a Scenic Road on the Scenic Resources Map 3? It is surrounded by ESHA on the City's ESHA Map 3, and it abuts National Park Service parkland. It is included as a Scenic Road in the current (September 2002) LUP.

Thank you for the opportunity to comment. Please contact Paul Edelman at (310) 589-3200, ext. 128 or Judi Tamasi at (310) 589-3200, ext. 121 if you have any questions.

Sincerely,

JEROME C. DANIEL
Chairperson